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**June 1 Transcript**

# **June 1, 2011 Transcript**

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SUPREME COURT : NASSAU COUNTY  
PART No. 13

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BRT REALTY TRUST and W FINANCIAL  
FUND L.P.,  
Plaintiffs,

-against-

Index No.  
1473/2010

MOSHE LAX, ESTATE OF CHAIM LAX and  
YITZCHOK HAGER, a/k/a ISSAC HAGER,  
Defendants.

X-----X

100 Supreme Court Drive  
Mineola, New York  
June 1, 2011

MINUTES OF STIPULATION

B e f o r e:

HON. THOMAS FEINMAN,

Justice.

APPEARANCES:

For the Plaintiffs:

JASPAN SCHLESINGER, LLP  
300 Garden City Plaza  
Garden City, NY 11530-3324

BY: STEVEN R. SCHLESINGER

For the Defendants Moshe Lax and Estate of Chaim Lax:

RUSKIN MOSCOU FALTISCHEK, P.C.  
1425 RXR Plaza East Tower 15th Floor  
Uniondale, NY 11556-1425

BY: MATTHEW F. DIDORA

1 APPEARANCES (Continued):

2 For Non-party 20 Bayard Views, LLC:  
3 PORZIO, BROMBERG & NEWMAN, P.C.  
4 100 Southgate Parkway  
5 Morristown, NJ 07962-1997  
6 BY: WARREN J. MARTIN, JR.

7 For the Proposed Intervenors The Chaim Lax Family Trust,  
8 LX Holdings, LLC, Favorite Properties, LLC, Favorite  
9 Enterprises, LLC, Gama Trust and Gamma Trust:  
10 LAW OFFICE OF STEVEN COHN, P.C.  
11 One Old Country Road Suite 420  
12 Carle Place, NY 11514  
13 BY: STEVEN COHN

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CONSTANCE BERRILL, CSR  
Official Court Reporter

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1 (In open court.)

2 THE COURT: Who is going to put it on the  
3 record?

4 MR. SCHLESINGER: I will do my best, and  
5 everybody can chime in.

6 THE COURT: Chime in quickly.

7 MR. SCHLESINGER: It's my understanding that the  
8 case -- and I represent the judgment creditor in this  
9 proceeding, that this case as well as all of the related  
10 cases, which will include the bankruptcy case called 20  
11 Bayard Views, LLC, under Eastern District Bankruptcy  
12 No. 10-01198, as well the proceeding pending before  
13 Justice DiStefano on the fraudulent conveyance, are all  
14 settled as a package that will result in the following  
15 actions:

16 The debtor in the bankruptcy case will cooperate  
17 and file a consensual plan, wherein my clients will  
18 contribute 1 million 5 to the plan --

19 MR. MARTIN: 1 million 500 thousand to the plan.

20 MR. SCHLESINGER: One million five hundred  
21 thousand to the plan. The plan will be filed as soon as  
22 practicable, and following the filing, approval, and  
23 acceptance of the plan, the plan will convey to my clients  
24 the real estate owned by the debtor, 20 Bayard Views, LLC.

25 THE COURT: Wait a minute. Who is getting the

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1 real estate?

2 MR. SCHLESINGER: My clients will get the real  
3 estate under the plan, pursuant to the plan, in exchange  
4 for contributing 1 million 5 to the plan. There will be  
5 releases between all the parties, joint releases.

6 As part of the plan they will give to our  
7 clients the rent rolls, the security deposits, the keys,  
8 the leases, and any contracts, as well as any principals  
9 of the debtor or any related parties will resign from the  
10 condo association board and designate my clients in their  
11 place and designate my clients as successor sponsor of the  
12 plan.

13 (Discussion held off the record among counsel.)

14 MR. SCHLESINGER: And all appeals related to  
15 this case --

16 THE COURT: All appeals are withdrawn, all  
17 subpoenas are withdrawn, all motions are withdrawn.

18 MR. SCHLESINGER: OK. And all documents  
19 produced in any proceeding relating to discovery will be  
20 returned, and this will all be done upon the consummation  
21 of the plan.

22 Correct? Is that the correct term, consummation  
23 of the plan?

24 MR. MARTIN: Confirmation.

25 MR. SCHLESINGER: Confirmation or consummation?

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1 THE COURT: How about both? Upon approval of  
2 the plan.

3 MR. MARTIN: On the effective date of the plan.

4 MR. SCHLESINGER: Yes, it has to be the  
5 effective date, because it has to be approved, and then  
6 there's a ten-day appeal period.

7 THE COURT: Do you have something else to add to  
8 this?

9 MR. SCHLESINGER: I don't believe so.

10 THE COURT: Mr. Martin?

11 MR. MARTIN: Yes. The bankruptcy plan will  
12 include customary releases all around, including  
13 third-party releases, which will not be objected to.  
14 That's to my clients, to the professionals; what we call  
15 in bankruptcy exculpation provisions.

16 All documents that the plaintiffs in this matter  
17 have received through subpoenas, through discovery --

18 THE COURT: I believe he has already said that.  
19 We don't have to reiterate. Tell me what exception you  
20 take, if any.

21 MR. MARTIN: I believe --

22 THE COURT: Mr. Cohn?

23 MR. MARTIN: -- I would like, as well, if those  
24 documents have been shared with any other parties, I would  
25 like a representation as to whom.

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1 MR. SCHLESINGER: I'm not aware of anyone  
2 they've been shared with other than my clients and  
3 ourselves and filed with the Court.

4 MR. MARTIN: I will accept that representation.

5 THE COURT: That's not something that's truly  
6 enforceable.

7 MR. MARTIN: I know that, but I would like that  
8 representation.

9 THE COURT: Do you have anything of substance to  
10 add?

11 MR. MARTIN: I have 1.5 million for a deed to  
12 all apartments and related areas, full use of the  
13 property. That's the essence.

14 THE COURT: Mr. Cohn?

15 MR. COHN: There has been a stipulation to  
16 intervene on behalf of the trust.

17 THE COURT: And I'm allowing that to happen.

18 MR. COHN: Because we want to be the beneficiary  
19 of a release also, and beneficiary of the settlement.

20 THE COURT: Yes.

21 MR. COHN: So it's clear we are in the case.

22 THE COURT: You are clearly in the case. You  
23 have intervened, and the people you represent will get  
24 releases.

25 MR. COHN: And I don't know if the address of

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1 the property has ever been mentioned on the record. So  
2 there is no mis --

3 MR. MARTIN: 20 Bayard Street, Brooklyn,  
4 New York.

5 MR. COHN: Let's put it on the record.

6 MR. SCHLESINGER: I think I referred to it as  
7 the real property owned by --

8 MR. COHN: You may have.

9 MR. SCHLESINGER: -- 20 Bayard Views, LLC.

10 THE COURT: Gentlemen --

11 MR. SCHLESINGER: Just one more thing. I think  
12 as a matter of practicality we should -- let's adjourn  
13 this case out 45 days, so they can file the plan and get  
14 it approved.

15 Is that a reasonable amount of time?

16 THE COURT: I'm not adjourning it. We are  
17 settling it on the record now, subject to a motion to  
18 reopen if it doesn't happen.

19 Now I lost my train of thought. See what  
20 happens?

21 MR. MARTIN: Time frame?

22 THE COURT: Approximate time frame?

23 MR. MARTIN: We have a conference with the  
24 bankruptcy judge on Friday. She will be very happy to  
25 hear the case is settled. I think everyone here wants it

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1 done quickly. If we can get a plan confirmed in  
2 ninety days, super.

3 THE COURT: And the keys will be turned over as  
4 expeditiously as permitted.

5 MR. MARTIN: In connection with what  
6 Mr. Schlesinger called the effective date, which is a  
7 bankruptcy term of art.

8 THE COURT: I want the record to reflect that we  
9 have had numerous lengthy conferences on this case  
10 involving all the parties, their attorneys, attorneys who  
11 have intervened. We have required accountants to show up,  
12 have had the parties here, have had all sorts of advisers  
13 here. And everybody now understands and appreciates the  
14 significance of this deal, and there are no questions from  
15 anybody; is that correct?

16 MR. SCHLESINGER: That's correct. And we want  
17 to thank the Court for absolutely going above and beyond  
18 in settling this case.

19 (Continued on next page. Nothing deleted.)  
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1 MR. COHN: Yes, I join in that.

2 MR. MARTIN: Thank you, your Honor.

3 MR. DIDORA: Thank you.

4 THE COURT: Good luck to you all. And I think a  
5 real good deal was made. I really do.

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8 Certified that the foregoing is a true and accurate transcript  
9 of the original stenographic minutes in BRT Realty v. Lax, et  
10 al., taken on June 1, 2011.

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Constantine Zoumal CSR  
CONSTANTINE ZOUMAL CSR  
Official Court Reporter